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Letter dated 11 June 2008 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached report from Costa Rica submitted pursuant to resolution 1624 (2005) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Neven **Jurica**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Note verbale dated 27 May 2008 from the Permanent Mission of Costa Rica to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

[Original: Spanish]

The Permanent Mission of Costa Rica to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism and has the honour to refer to resolution 1624 (2005) referring to the prohibition of incitement to commit acts of terrorism.

In this connection, the Permanent Mission of Costa Rica to the United Nations has the honour to attach the report prepared by the Inter-Agency Commission on Terrorism pursuant to paragraph 5 of the above-mentioned resolution (see enclosure).

Enclosure

Report of Costa Rica

Resolution 1624 (2005)

Work of the Inter-Agency Commission on Terrorism (CISTE)

The Inter-Agency Commission on Terrorism (CISTE) was created by Executive Decree No. 31659-MP-RE-SP-H-J.MOPT of 10 February 2004, published in Official Gazette No. 40 of 26 February 2004, to be responsible for the dissemination in Costa Rica of information on international efforts relating to security and counter-terrorism. The Commission has the following duties:

a. To serve as a liaison between the various State agencies whose objectives are directly or indirectly related to combating terrorism or to ensuring the security of the country and its citizens.

b. To coordinate follow-up to the international commitments made by the country in relation to security and combating terrorism.

c. To recommend to the Ministry for Foreign Affairs and Worship, or to the competent authorities, the positions to be taken by Costa Rica at the various international forums in which the subject of security and terrorism are discussed.

The first regular meeting of CISTE was held on 16 January 2007. The meeting was successful, as it was attended by almost all its members. The first regular meeting for 2008 was held on 15 January 2008, with similar success.

The Commission has held meetings with deputies in the Legislative Assembly and their advisers, as well as with the Commission on Drug Trafficking, to encourage them to evaluate, analyse and adopt the draft Law on the Strengthening of Legislation against Terrorism (No. 15494). Recently (from 28 February to 2 March), the Deputy Minister of the Presidency and Chairman of CISTE and a large delegation participated in the seventh regular session of the Inter-American Committee against Terrorism, at which the Declaration of Panama on the Protection of Critical Infrastructure in the Hemisphere in the Face of Terrorism was adopted. The Commission presented a report and a clear proposal stating Costa Rica's position on issues such as the Costa Rica Consensus, terrorism and all the measures and activities carried out in this country.

In pursuing its objectives, CISTE has carried out the following activities.

1. Legislation

A serious effort has been made to combat terrorism through legal instruments and cooperation. For example, on 15 September 2006, Costa Rica ratified the Inter-American Convention Against Terrorism. In September 2005, it signed the International Convention for the Suppression of Acts of Nuclear Terrorism, and it is currently taking the necessary steps for legislative approval. We are also committed to the adoption of a law on terrorism that will be compatible with all international legal norms. CISTE has met with deputies and advisers to the Commission on Drug

Trafficking regarding the possibility of convening special meetings of the Legislative Assembly to consider the draft Law on the Strengthening of Legislation against Terrorism.

In January 2007, work began on a comparative analysis of the legal texts pertaining to the draft Law on the Strengthening of Legislation against Terrorism, in order to summarize the original majority opinion on the draft and the amendments introduced under the legislative procedure known as "Motion 137" (motion under rule 137 of the rules of the Legislative Assembly, introducing amendments to draft legislation).

To contribute valid and pertinent information to assist in the preparation and analysis of the draft, a comparative table was drawn up of the main problems mentioned by United Nations experts in March 2005 with regard to draft Law No. 15494 (Strengthening of Legislation against Terrorism, 2005). The table includes comments and suggestions for the wording of specific articles of the draft.

In early 2006, the international experts again analysed the draft Law and the amendments that had been proposed under motion 9-137. They issued a new report dated 19 September 2006 containing their conclusions and recommendations, analysing draft Law No. 15494 on the Strengthening of Legislation against Terrorism, and additional comments made by the United Nations Office on Drugs and Crime (UNODC) in March 2005. The current CISTE secretariat and the former Secretary, Arnoldo Brenes Castro, prepared a new comparative table highlighting the main observations made by the experts and suggesting possible solutions for complying with Costa Rica's obligations under international conventions.

To sum up, CISTE has reviewed and analysed national legislation and recommended solutions to the main issues raised by the United Nations experts with regard to draft Law No. 15494, on the Strengthening of Legislation against Terrorism, and the amendments made under Motion 137.

Accordingly, CISTE met with the Commission on Drug Trafficking, which is reviewing the draft Law, to provide advice and information on the steps needed in order to comply with international legislation.

On 9 January 2007, CISTE met with Deputy Federico Tinoco Carmona, who at that time was Chairman of the Commission on Drug Trafficking, to explain the need for certain amendments to the draft Law on the Strengthening of Legislation against Terrorism. The Deputy Minister of the Presidency and current Chairman of CISTE, who convened the meeting, reported on some problems that had arisen because of the lack of national legislation on terrorism. At that time, the first draft of Costa Rica's 2006 Mutual Evaluation Report had been received. It pointed out that Costa Rica needed to meet certain obligations assumed under international commitments, especially in regard to terrorism (see report, page 40). At the same time, a copy of the report was provided to Federico Tinoco Carmona. The Deputy Minister of the Presidency explained that some of the instances in which Costa Rica was not in compliance with international agreements on terrorism were due to the fact that the draft Law on the Strengthening of Legislation against Terrorism had not been adopted. Those present at the meeting, as well as deputies and advisers involved in the study, analysis and approval of the draft Law, were therefore made aware of all background information relating to the drafting and analysis of the Law.

In addition, they were provided with analytical documents, comparative tables and other documents pertaining to the analysis of the original majority opinion on the draft Law and the amendments made under motion 9-137.

On 2 February 2007, Deputy Tinoco was provided, under cover of memorandum DVJT-052-2007, with the main observations and recommendations made by a group of United Nations experts in March 2005 and December 2006, and other information on the extent to which draft Law No. 15494 on the Strengthening of Legislation against Terrorism was consistent with Costa Rica's obligations in the context of international law.

On 22 September 2007, by memorandum PCICD-0245-2007, CISTE formally requested the Chairman of the Commission on Drug Trafficking, Marvin Rojas Rodríguez, to schedule a hearing with it for the purpose of considering an important letter from the Egmont Group addressed to Mauricio Boraschi, Director of the Costa Rican Drug Institute (ICD). In that letter, the Egmont Group warned Costa Rica about the possible consequences of its failure to meet its international commitments with regard to legislation.

Mauricio Boraschi, Administrative Director of ICD, attended the hearing on Thursday, 1 November, at which the main problems relating to Costa Rica's international commitments and its legislation on terrorism and terrorism financing were explained. Its particular situation in the Egmont Group, arising from its failure to bring its legislation into line with international norms, was specifically discussed.

Current status of the draft Law

The current status of the draft Law on the Strengthening of Legislation against Terrorism is as follows:

1. A majority opinion was issued by the Commission on Drug Trafficking, and three reports have been issued under Motion 137 procedures. Those that have been adopted need to be incorporated in the text of the opinion.

2. A fourth report will be issued if new motions are presented. Since the item is not high on the Plenary's agenda, it is still possible to introduce new amendments to the draft if they are taken up by a member of the Legislative Assembly.

3. As of this date, no new motions have been presented. The parliamentary advisers have been given a document concerning the principal motions that would bring the draft Bill into line with international requirements.

4. At the hearing with the Commission on Drug Trafficking that was held on 1 November to discuss the situation, Deputy Francisco Molina proposed that the motions should be reviewed by the parliamentary advisers to the Deputies serving on the Commission and by the advisers to the executive branch working on the draft. The Commission's meeting with parliamentary advisers was cancelled when a special session of the Legislative Assembly was convened for Thursday, 22 November, the date planned for reviewing the motions. It has not yet been possible to reschedule the meeting.

Resolution 1624 (2005)

With regard to the commitment undertaken by States to prohibit by law incitement to commit a terrorist act or acts referred to in resolution 1624, it should be noted that our legal system is not silent on the matter. Articles 273 and 274 of the Penal Code cover those offences, as follows:

Public incitement

Article 273

Any person who incites another to commit an offence that disturbs the public peace shall be punished by imprisonment for six months to four years, regardless of whether the act occurs. (The numbering of this article was changed from 271 to 273 by article 185 (a) of Law No. 7732 of 17 December 1997.)

Unlawful association

Article 274

Any person who associates with two or more persons to commit a crime shall be punished by imprisonment for one to six years, merely because of membership in the association.

The punishment shall be six to ten years' imprisonment if the purpose of the association is to commit terrorist acts or kidnapping for ransom.

(As modified by the sole article of Law No. 8127 of 29 August 2001.) (The numbering of this article was changed from 272 to 274 by article 185 (a) of Law No. 7732 of 17 December 1997.)

However, since the Counter-Terrorism Committee of the United Nations Security Council has indicated that the criminalization of the recruitment of persons to commit terrorist acts must include the possibility that the recruiter is not a member of an organization, article 13 of draft Law No. 15494 on the Strengthening of Legislation against Terrorism and, specifically, article 274 bis describes the characteristics of this type of crime:

"Provision of support and services to terrorism

1. Any person who recruits someone else to take part in the commission of any act of terrorism shall be punished by six to ten years' imprisonment.

2. Any person who voluntarily provides any type of support or services, including weapons, with the intention or the knowledge that this service will be used to commit any of the acts referred to in the preceding paragraph shall receive the same punishment."

Following the March 2005 recommendations of the United Nations experts, improvements are being made in draft Law No. 15494 to ensure that the following principles are clearly included in our laws:

(a) The active nationality principle;

(b) The principle *aut dedere aut iudicare* (the terrorist must be either extradited or tried);

(c) The principle that terrorist crimes are not considered to be political or politically motivated crimes.

The second paragraph of article 6 bis, entitled "Application of the Penal Code in the case of acts of terrorism", of article 16 of draft Law No. 15494, indicates that, for extradition purposes, crimes related to terrorism will not be considered to be political or politically motivated crimes.

Border and customs controls

In this context, intelligence is known to be one of the first lines of defence in any counter-terrorism programme, enabling the threat to be identified and information to be exchanged with counterpart services in America, Europe and Asia, through communication networks, which are extremely useful tools for obtaining the names of persons suspected of being involved in terrorism and general information on terrorism.

Based on these exchanges, the Directorate of Intelligence and Security (DIS) maintains an expanding database with information on persons suspected of being connected to terrorist networks and activities, and issues the corresponding warnings should such persons enter the country.

During 2006, as a result of the global realignment resulting from the events of 2001 in the United States and subsequently in Europe, and in order to strengthen action to prevent and combat terrorism, DIS (like other institutions that have jointly participated in developing security policies to control any terrorist activities that may be carried out on national territory) was involved in the following measures:

1. The security policies that have been put in place include, in particular, those related to the official implementation of the "Protocol for responding to major crises". This is the specialized instrument that will provide the technical platform for the construction, development and operation of the necessary mechanisms for responding to, resolving and monitoring major crises in any part of the national territory.

In major crises, given its expertise and coverage, DIS will be responsible for gathering information to forestall political or economic crises for the Government, as well as information on possible actions against the physical or other integrity of senior representatives of the supreme powers of the Republic and on threats to national territorial integrity.

2. DIS cooperates and constantly exchanges information with counterpart services in Ibero-America, through communication networks; these are an extremely useful tool for obtaining the names of persons suspected of being involved in terrorism and general information on terrorism.

Such cooperation and communication facilitate consultations about terrorist actions, suspicions or connections, and any information is analysed and included in the respective database.

3. DIS and the Directorate of Immigration and Aliens (DIA) have together established the criteria for the creation of a database to issue a warning if a person linked to a terrorist network enters the country.

Under the rules in force, DIS provides the Directorate of Immigration and Aliens with intelligence on persons suspected of being linked to terrorist organizations. This information comes from DIS sources, and also from INTERPOL. However, the consolidated list does not appear on the database of the INTERPOL office in Costa Rica, but on a list considered by DIS to be a "standing alert" only at the national level.

Other lists of terrorists provided by the United Nations, the International Criminal Police Organization (INTERPOL) and the European Police Office (EUROPOL), are transferred to the Costa Rican Drug Institute (ICD), the Office of the Superintendent of Financial Institutions (SUGEF), the Office of the Superintendent of Securities (SUGEVAL), the Office of the Superintendent of Pensions (SUPEN), and the Directorate of Immigration and Aliens. DIS also works with this list, in coordination with the customs authorities and other police forces.

4. Participation in different global meetings of the 184 countries that are members of INTERPOL, where questions related to terrorism, bioterrorism and the non-proliferation of weapons of mass destruction, and the latest investigative techniques to combat this type of organized crime are discussed.

5. The issue of terrorism is on the permanent national security agenda of the Government of Costa Rica, through DIS, CISTE and other agencies and institutions connected with security.

This aspect is of considerable operational importance because it provides the legal mandate, since the Police Act, which created the State Security Directorate, only indicates very generally that the role of DIS is to supervise national security or State security, and fails to include other very important elements such as its jurisdiction and the investigative techniques it may use.

Owing to the nature of terrorism, the *iter criminis* includes a whole planning process that can be carried out from various places and countries and in various ways; it may also cover many different actions. It is precisely the modus operandi of terrorism that makes it so difficult to uncover plans to commit an attack. It is covert war rather than open warfare. Terrorists act by infiltration; they wage a war of attrition on the enemy. In brief, they carry out a war of high intensity, where only one person is needed to activate an explosive device or a car bomb, to block airline electronic communication networks, to contaminate water supply systems or to control hydroelectric dams, etc. merely by pressing a button.

Because of its specific methods and techniques, even the most specialized intelligence agencies have found it very difficult to detect this type of activity. In Costa Rica, DIS has always been responsible for investigating and detecting any incident of this type, because we consider that the legislator must grant the competence to investigate, detect or prevent possible terrorist activities by law, and must also indicate the powers and functions of DIS in this area, in the latter's capacity as custodian of State security.

DIS is an essential part of government policy on terrorism; as such, it is charged with carrying out investigations related to matters including but not limited to subversion, sabotage, "front" groups, concealment or promotion of anti-system activities, illegal movement of weapons, possible financing of terrorist activities, threats to senior government officials and organized crime.

Furthermore, the Directorate of Shipping and Security of the Maritime Port Authority is responsible for monitoring and reviewing port facility security plans, which are certified annually and based on the International Code for the Security of Ships and Port Facilities (Executive Decree No. 31845-MOPT, published in insert No. 27, Official Gazette No. 119 of 18 June 2004).

Among institutional security actions, the Costa Rica Institute of Electricity has increased protection of major electricity and telephony infrastructure works such as electricity generation plants and cellular radio bases, in particular against vandalism, which causes serious economic damage and, in particular, damage to public services that all citizens need. In this regard, other external bodies, including the Public Prosecutor's Office, State security forces and the Judicial Inquiry Agency, are making joint efforts with close coordination and collaboration.

The General Customs Directorate of Costa Rica is responsible for the following customs controls:

A. Existing monitoring activities in the various customs ports established to regulate cash inflows and outflows:

Since terrorism is typically financed through money-laundering (legalization of capital), starting in 2004 a series of policies and administrative measures has been implemented to aid in the prevention and suppression of this type of crime, including:

- Resolution RES-DGA-153-2004 adopting the "Procedural Manual for Admitting Travellers and their Goods", which establishes the general rules to be followed at customs ports.
- Resolution RES-DGA-072-2005 of 17 February 2005 approving the "Central American Traveller's Customs Declaration" form to be used by travellers arriving by air, sea and land.
- Regarding port security, it is important to highlight the 2006 adoption of the regulations for the public works licensee providing public services for the construction and operation of the Puerto Caldera Grain Terminal and for the manager of public services at the Puerto Caldera Terminal; the port administration licence was awarded to the Consorcio Portuario Caldera I and Consorcio Portuario Caldera II companies.

These licensees must comply with all the security measures imposed in coordination with the competent bodies, as has been the case for the Alterra Partners Costa Rica managing the Juan Santamaría International Airport.

In addition, in 2008 the General Customs Authority, in an effort to enhance existing controls, intends to submit to the technical commission for customs procedures a revision of the Central American Traveller's Customs Declaration form including a new section in which travellers must indicate the **origin** of assets. If the assets exceed ten thousand dollars (in cash) or fifty thousand dollars (in security),

travellers must prove that they acquired them legally, and this information will be subsequently submitted to the Costa Rican Drug Institute for a corresponding investigation.

Furthermore, CISTE realized that, since the current fine is as low as $100, there is a need to increase or stiffen the existing fine for travellers who fail to declare cash or securities, if the undeclared amount exceeds that permitted by Law 8204 ($10 million in cash and $50 million in securities). The relevant recommendations are being made to the commission on reform of the Customs Act in order to ensure that the fine under the current reform plan will be seen to be more severe, so as to reduce current customs controls.

This year, unannounced inspections of goods carried by travellers going through control points are being included both in the annual workplans of the various regulatory bodies in the National Customs Service and at the different customs ports. The inspections would be coordinated in advance in order to be carried out jointly with other relevant institutions such as the Costa Rican Drug Control Police (PCD), Immigration, and the Ministry of Agriculture and Livestock (MAG). The results will be reported in due course.

B. Imports of weapons, ammunition, accessories and explosives.

First it is necessary to highlight a number of administrative provisions (regulations, circulars, guidelines) and laws in force in respect of this issue:

- Resolution DGA-044-2004.
- Circular DNP-031-2004.
- Circular DNP-045-2005 "Customs Procedures Manual".
- Regulation on Hazardous Material Risk Classification.
- Law 8265 "Approval of accession to the Convention on the Physical Protection of Nuclear Material".
- Technical Regulation RTCR 305:1998 "Land transport of hazardous material". Designation of units for land transport of hazardous material and chemicals.
- Executive Decree No. 24334-S "Regulation to control the mercury and lead content of paint".
- Regulation on hazardous material registration.
- Approval of the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials.

In this connection, it is important to note that, since the entry into operation of the Information Technology Customs Control (TIC@) in December 2006, the risk rule or criterion (IMTDDE0386) has been implemented for physical and documentary verification of all weapons and ammunition imports, to ensure they meet the requirements established for entry into the country and to prevent the entry of prohibited weapons and ammunition.

Furthermore, risk profile INTDRPMH-01-2007 was implemented in January 2007; it ordered the Directorate of Oversight to conduct a documentary review of

237 import customs declarations. The review had positive results, including imposition of fines, and will therefore be conducted again this year.

In addition, in an effort to enhance existing controls, an electronic customs stamp has been used on containers carrying such goods since November 2006.